

## **Abstract**

### **Liability of governing bodies of limited companies against third parties for a breach of duty in the course of performance of function from a comparative perspective**

The thesis deals with the legal liability of company representatives, an important theme for several reasons. One is the fact that companies are legal persons, or entities which do not exist in reality and whose intentions are realised through persons distinct from them, namely their representatives.

Both legislation and the memorandum of association impose many duties on representatives which must be fulfilled. It may happen that these duties are breached, resulting in damage to a company, its associates, and other neutral parties, most often the company's creditors. We must consider if the legal order should pierce the veil around companies and allow the possibility of persons acting on a company's behalf to be directly sanctioned.

The thesis attempts to analyse the circumstances under which company representatives should be directly liable for their actions. With regard to the fact that the legislation is not developed in the Czech Republic, I had to work with foreign examples and deduce which provisions of Czech law might be useful for the development of the theory.

The first four chapters present and deal with concepts which are subsequently used in the thesis, such as "legal entity", "company representative" and "legal liability". I analyse the conceptions with which the Czech legal system, but also foreign law, especially French law, work. Last but not least, the thesis deals with trends which influence the regulation of these notions and which have contributed to their present development.

The next part describes the concept of the direct liability of company representatives in France. This country was chosen as it is a traditional civil law jurisdiction, thus close to the Czech legal culture, and because the theory of direct liability has been an interesting development there and is well established. In France, two situations under which the representatives might become liable for a company's acts have to be considered. First are the general cases when liability is incurred for a breach of statutory duties, or duties under a memorandum of association or in relation to a company's administration. Second is when a company becomes insolvent. These situations are relatively different. The French courts rarely impose general liability in the first case and interpret the provisions of the Commercial

Code restrictively. Conversely, in insolvency creditors may receive damages from a company's representatives relatively easily.

In the next part the thesis deals with the Czech regulation. As Czech law is not as developed in this area as some foreign legal systems, I identify which provisions of the Civil Code and the Commercial Code might be used as the basis for the development of direct liability. I suggest that the development should be made by the Czech courts. Examples from abroad are matched with various provisions to illustrate their potential and the specific situations under which direct liability has been imposed. Also, possible future regulation is suggested and the conception for a new Civil Code and Companies Act are presented.

In conclusion I state that in the meantime Czech law does not and probably will not allow direct liability. On the contrary, the law follows the principle which does not make representatives liable to creditors or other neutral persons.